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B. BRAUN MEDICAL INC.

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA -- WESTERN DIVISION**

CAREFUSION 303, INC.,

Plaintiff and Counter-  
defendant,

vs.

B. BRAUN MEDICAL INC.,

Defendant and  
Counterclaimant.

CASE NO. CV 11-01264 PA (ANx)

**Honorable Percy Anderson**

**DECLARATION OF JUSTIN A.  
MACLEAN IN SUPPORT OF  
DEFENDANT B. BRAUN MEDICAL  
INC.'S RESPONSIVE CLAIM  
CONSTRUCTION BRIEF**

Discovery Cutoff: June 25, 2012  
Final Pretrial Conference: July 20, 2012  
Trial Date: September 18, 2012

**DECLARATION OF JUSTIN A. MACLEAN**

I, Justin A. MacLean, declare as follows:

1. I am an attorney with Greenberg Traurig, LLP, counsel for Defendant B. Braun Medical Inc. ("B. Braun") in the above-captioned litigation. I am making this declaration in support of Defendant B. Braun Medical Inc.'s Responsive Claim Construction Brief (the "Brief"). I have personal knowledge of the matters stated below, and if called as a witness, I could and would competently testify regarding such matters.

2. Attached hereto as **Exhibit 1** is a true and correct copy of U.S. Patent No. 5,730,418 (the "'418 patent"), issued on March 24, 1998.

3. Attached hereto as **Exhibit 2** is a true and correct copy of the reexamination certificate for the '418 patent, issued on April 11, 2006.

4. Attached hereto as **Exhibit 3** is a true and correct copy of the Order Granting in Part and Denying in Part B. Braun's Motion for Contempt and Sanctions (Dkt. 87), dated April 6, 2012.

5. Attached hereto as **Exhibit 4** is a true and correct copy of excerpts from the deposition transcript of George Mansour, taken on May 4, 2012. **[FILED UNDER SEAL]**

6. Attached hereto as **Exhibit 5** is a true and correct copy of U.S. Patent No. 5,782,816, issued on July 21, 1998.

7. Attached hereto as **Exhibit 6** is a true and correct copy of U.S. Patent No. 5,685,866, issued on November 11, 1997.

8. Attached hereto as **Exhibit 7** is a true and correct copy of U.S. Patent No. 5,676,346, issued on October 14, 1997.

9. Attached hereto as **Exhibit 8** is a true and correct copy of U.S. Patent No. 5,549,577, issued on August 27, 1996.

10. Attached hereto as **Exhibit 9** is a true and correct copy of excerpts from the Expert Report of Karl R. Leinsing, MSME, PE, dated April 30, 2012. **[FILED UNDER SEAL]**

1 11. Attached hereto as **Exhibit 10** is a true and correct copy of excerpts from B.  
2 Braun's Invalidity Contentions.

3 12. Attached hereto as **Exhibit 11** is a true and correct copy of excerpts from  
4 Plaintiff CareFusion 303, Inc.'s Disclosure of Asserted Claims and Infringement  
5 Contentions (Dkt. 46, 46-1, 46-2), filed on February 13, 2012.

6 13. Attached hereto as **Exhibit 12** is a true and correct copy of excerpts from the  
7 Rebuttal Expert Report of Harri K. Kytomaa, Ph.D. Regarding Non-Infringement, dated  
8 May 21, 2012. **[FILED UNDER SEAL]**

9 14. Attached hereto as **Exhibit 13** is a true and correct copy of the Claim  
10 Construction Order in *Medegen MMS Inc. v. ICU Med., Inc.*, Civ. No. 8:06-cv-619 (C.D.  
11 Cal. June 21, 2007) (Dkt. 08).

12 15. Attached hereto as **Exhibit 14** is a true and correct copy of the Declaration  
13 of Timothy L. Truitt in Support of Medegen's Reply Claim Construction Brief in  
14 *Medegen MMS Inc. v. ICU Med., Inc.*, Civ. No. 8:06-cv-619 (C.D. Cal. Apr. 16, 2007)  
15 (Dkt. 85). **[FILED UNDER SEAL]**

16 16. Attached hereto as **Exhibit 15** is a true and correct copy from the rough  
17 deposition transcript of Tim Truitt, taken June 20, 2012. **[FILED UNDER SEAL]**

18 17. Attached hereto as **Exhibit 16** is a true and correct copy of excerpts from  
19 Plaintiff CareFusion 303, Inc.'s Responses to Defendant B. Braun Medical, Inc.'s First  
20 Set of Interrogatories to CareFusion 303, Inc. (Nos. 1-5).

21 18. Attached hereto as **Exhibit 17** is a true and correct copy of U.S. Patent No.  
22 5,509,433, issued on April 23, 1996.

23 19. Attached hereto as **Exhibit 18** is a true and correct copy of U.S. Patent No.  
24 5,439,451, issued on August 8, 1995.

25 20. Attached hereto as **Exhibit 19** is a true and correct copy of excerpts from the  
26 deposition transcript of Raymond Feith, taken May 3, 2012. **[FILED UNDER SEAL]**

27 21. Attached hereto as **Exhibit 20** is a true and correct copy of excerpts from the  
28 prosecution history of the *ex parte* reexamination of the '418 patent.

22. Attached hereto as **Exhibit 21** is a true and correct copy of excerpts from the Rebuttal Report of Karl R. Leinsing, MSME, PE, dated May 21, 2012. **[FILED UNDER SEAL]**

23. Attached hereto as **Exhibit 22** is a true and correct copy of excerpts from the Expert Report of Terry N. Layton Ph.D. Regarding Invalidity of U.S. Patent No. 5,730,418 and 5,782,816 April 30, 2012.

24. Attached hereto as **Exhibit 23** is a true and correct copy of is a true and correct copy of excerpts from the prosecution history of the '816 patent.

25. Attached hereto as **Exhibit 24** is a true and correct copy of excerpts from *The American Heritage Dictionary* (1985) (Second College Edition).

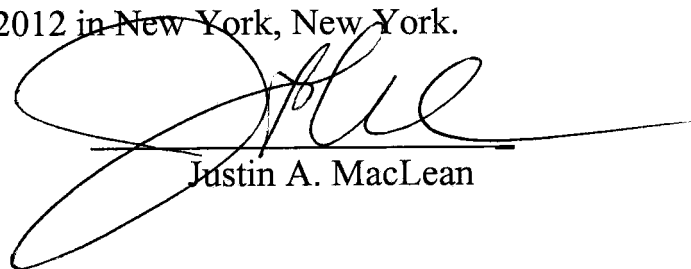
26. Attached hereto as **Exhibit 25** is a true and correct copy of excerpts from *Academic Press Dictionary of Science and Technology* (1992).

27. Attached hereto as **Exhibit 26** is a true and correct copy of *Webster's Third New International Dictionary of the English Language Unabridged* (1981).

28. Attached hereto as **Exhibit 27** is a true and correct copy of U.S. Patent No. 5,470,319.

29. In the preparation of the Joint Claim Construction Statement, CareFusion 303 refused to explain what the "plain and ordinary" meaning of "off-axis" was during the parties' meet and confer. It was only shortly before the Joint Claim Construction Statement was to be filed that CareFusion 303 disclosed for the first time its construction of "off-axis" as "off the axis of the housing."

I declare under penalty of perjury that the foregoing is true and correct and that this Declaration was executed on June 21, 2012 in New York, New York.



Justin A. MacLean